overruled dicta[11] of the first English case,[12] decided that a payee is not a holder in due course. Though this conclusion is disproved by recognized writers on the subject,[13] it has permeated itself into a considerable group of corroborative authorities.[14] The Massachusetts Supreme Court in a careful decision[15] reached the opposite view deciding that a payee is a holder in due course, and this decision[16] expresses the rule in many other jurisdictions.[17] It is followed in case of *The Bank of Commerce v. Randell.*[18] But South Dakota, citing additional cases in favor of the Iowa view, distinctly refused to follow the Nebraska decision.[19] It is submitted that the principal case represents the better view because it is more in accord with the law merchant and enables an innocent payee to assert the same rights that a single negotiation could give to a subsequent holder. If it is decided contra, a tendency is created for the bank to sell to some one else which in the ordinary business transaction in regard to promissory notes at least, is not the anticipation of the bank's client.

T. H. L.

CONSTITUTIONAL LAW: VETERANS WELFARE LEGISLATION IN CALIFORNIA—Recognizing that under the Constitution of California a law providing for a cash bonus to veterans of the Great War would be invalid,[1] the legislature passed a series of acts which, taken together, were designed to afford a scheme by which the public welfare might be served through the giving of certain

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[11] Vander Ploeg v. Van Zuuk (1907) 135 Iowa 350, 112 N. W. 807, 13 L. R. A. (N. S.) 490, 124 Am. St. Rep. 275. A conclusion seemingly firmly established in Iowa. Devoy & Kuhn Coal Co. v. Hutting (1916) 174 Iowa 357, 156 N. W. 413.

[12] Supra, n. 7.

[13] Henning, Uniform Negotiable Instruments Act, 59 University of Pennsylvania Law Review, 481, 508.

[14] Long v. Shafer (1914) 185 Mo. App. 641, 171 S. W. 690; Southern National Life Co. v. People's Bank (1917) 178 Ky. 80, 198 S. W. 543; Bowles v. Frazer (1910) 59 Wash, 336, 109 Pac. 812, 31 L. R. A. (N. S.) 613. See note 15 A. L. R. 437.

[15] Liberty Trust Co. v. Tilton (1914) 217 Mass. 462, 465, 105 N. E. 605.

[16] This view is favored by recognized scholars on the subject; Brannon (3rd ed.) Negotiable Instruments Law, p. 58; University of Pennsylvania Law Review, 471, 480.

[17] Colonial Furn. Co. v. First Natl. Bank, 227 Mass. 12, 116 N. E. 731. Redfield v. Wells (1918) 31 Idaho 417, 173 Pac. 640; Johnson v. Knipe (1918) 260 Penn. 504, 103 Atl. 957, L. R. A. 1918E 839; Brown v. Brown (1915) 91 Misc. Rep. 220, 154 N. Y. Supp. 1098; First Natl. Bank v. Gridley (1906) 112 App. Div. 398, 98 N. Y. Supp. 445. Ex parte Goldberg v. Lewis (1914) 191 Ala. 356, 69 So. 839, L. R. A. 1915F 1159. Bank of Commerce and Savings v. Randell (1921) 186 N. W. 70 (Neb.); See also Helper State Bank v. Jackson (1916) (Utah) 160 Pac. 287 (payee bank recovers being called a holder for value).

[18] (1921) 186 N. W. 70 (Neb.).

[19] Britton Milling Co. v. Williams (1922) 187 N. W. 159, (South Dakota) 160.

[1] See 10 California Law Review, 75, et seq., particularly at pp. 77, n. 22 and 79, n. 36.

opportunities to veterans. Four of these statutes have now been passed upon by the State Supreme Court. Three were presented to its attention by a petition for a writ of mandate by the Veterans Welfare Board constituted by the acts in question, the writ to be directed to the State Controller to require him to issue warrants for expenses incurred under the "California Veterans Welfare Act,"[2] the "Veterans Farm and Home Purchase Act,"[3] and the "Veterans Educational Act,"[4] for which appropriations were duly made. Writs were allowed for the expenses incurred under the first two acts in *Veterans Welfare Board v. Riley*.[5]

The Veterans Welfare Act provides "for the purchasing and improving of lands [by the Board], and the selling of the same in small parcels to veterans who will become actual settlers, the purchase price to represent the pro rata proportion of the actual cost of such land and improvements, the purchase price to bear interest at 5% per annum, and to be compounded if not paid."[6] The period for payment is twenty years. The Veterans Farm and Home Purchase Act authorizes the Veterans Board to purchase for resale to veterans land for agricultural purposes not exceeding to each the value of $7500, or a home or home site not exceeding the value of $5000. The applicant selects the property subject to the approval of the Board, and is to make the initial payments of 10% in case of a farm or 5% in case of a home, the remaining payments to extend over a forty-year period. An applicant may have the advantage of but one of the acts.

This first decision considers the constitutionality of these statutes only to that extent necessary in determining "whether or not there is sufficient validity in these laws to justify the appointment of the Veterans Welfare Board and the incurring by them of expenses covered by the claims set out in the petition looking toward the carrying out of the laws."[7] It considers the appropriations in both cases to be for a public purpose, adopting the view of the recent bonus cases in other states.[8] The purchase and resale plan is then held to involve a loan of State money, not of State credit, in so far as expenditures under it are from funds not otherwise appropriated. This loan is neither grant nor

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[2] Approved May 30, 1921. Stats. 1921, p. 969, Deering's Consol. Suppl. 1917-1921, 1981.

[3] Approved May 30, 1921. Stats. 1921, p. 815, Deering's Consol. Suppl. 1917-1921, 1970.

[4] Approved May 30, 1921. Stats. 1921, p. 967, Deering's Consol. Suppl. 1917-1921, 1980.

[5] (April 10, 1922) 63 Cal. Dec. 488, 206 Pac. 631.

[6] 63 Cal. Dec. 488, 491.

[7] 63 Cal. Dec. 488, 492.

[8] People v. Westchester County National Bank (1921) 231 N. Y. 465, 132 N. E. 241; State *ex rel.* Atwood v. Johnson (1919) 170 Wis. 218, 175 N. W. 589, 7 A. L. R. 1617; State *ex rel.* Atwood v. Johnson (1920) 170 Wis. 251, 176 N. W. 224; Gustafson v. Rhinow (1920) 144 Minn. 415, 175 N. W. 903; State *ex rel.* Hart v. Clausen (1921) 113 Wash. 570, 194 Pac. 793, 13 A. L. R. 580, 587n.

allowance, so that the constitutional prohibitions of Article IV, section 31 against gifts of money and loans of credit are evaded.

The legislature recognized, however, that the projects designed under these acts involved expenditure of large sums which could not be readily provided by tax levy to form a fund subject to appropriation. Accordingly, the "Veterans Welfare Bond Act"[9] was passed, providing for a bond issue of $10,000,000. This act includes a provision for its submission to the voters of the State. The Secretary of State refusing to order the statute to be published on the ground of its unconstitutionality, the question was again submitted to the Supreme Court by petition for a writ of mandate. In *Veterans Welfare Board v. Jordan*[10] the writ was granted, but financing by bonding was held unconstitutional as applied to the Farm and Home Purchase Act, though constitutional in the main where the Welfare Act was concerned.

The court reasons as follows: A debt of the State is to be created. To be valid such must be for a public purpose which does not involve giving or loaning of the credit of the State to individuals, directly or indirectly.[11] Under the Welfare Act there is a clear general purpose to be served in the development and subdivision of large tracts of land, entirely apart from any supposed public benefit arising from the aid to veterans incidentally afforded. The Farm and Home Purchase Act, in merely giving to individuals the opportunity of purchasing homes on favorable terms, seems to the court not to serve a public purpose sufficient to remove from the bond issue in aid of it, the charge of indirect loan of state credit to the purchasers. This charge is plainly valid when levelled against the unsecured loans for purchase of personal property permitted by the Welfare Act, which is to this extent unconstitutional. But in spite of the failure of part of the legislative scheme, the writ is ordered, there being evidence that the plan was regarded by the legislature as severable.

The first interesting point in this decision is the discussion of the creation of a debt under the Constitution, which results in a limitation on the old rule of People v. Pacheco.[12] Here the court impliedly adopts the criticism of this rule made in the Iowa case of Rowley v. Clarke, [13] that attempts to appropriate revenues in advance for more than the biennial period do amount to mortgaging the State revenues and creating State debts, even though the liabilities which the appropriations are to meet do not technically accrue at the time of the legislative act, but after the tax levy. In so doing, the court recognizes that, though probably sus-

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[9] Approved May 30, 1921. Stats. 1921, p. 959, Deering's Consol. Suppl. 1919-1921, 1974.

[10] (June 13, 1922) 63 Cal. Dec. 694.

[11] The reasoning of People v. Westchester County National Bank, supra, n. 8, is followed on this point.

[12] (1865) 27 Cal. 176.

[13] (1913) 162 Iowa 732, 753, 144 N. W. 908, 916.

tainable as wartime legislation,[14] the act involved in the Pacheco case is logically supportable under ordinary conditions only by adopting a theory that to plan to pay a debt when it falls due is enough; it is then not a debt. But such a theory should certainly not be held applicable beyond the biennial appropriation period within which it may be sustained on purely practical grounds.[15]

One is less certain of the logical basis for the determination that the Welfare Act serves a purpose apart from veterans aid for which the State may incur a debt, while the Farm and Home Purchase Act does not. The latter is considered as equivalent to an authorization of purchases by individuals on mortgages involving State credit. The former is sustained as a land settlement scheme fulfilling public purposes,[16] Green v. Frazier[17] being cited as the authority of greatest weight. In using this case it would seem that too much was proved, that its language was equally applicable to the Farm and Home Purchase Act in its reference to the function of the legislature as the judge of public policy and need, to whose decision all benefit of doubt should be given. The North Dakota Act in question[18] provided for State conduct of a home building business on private building and loan association lines. The desirability of prevention of migration of population seemed an adequate basis for determining this business to be for public purpose, so that taxation for payment of the debts incurred would not be taking of property without due process of law. Here there was no territorial unity in the development scheme: the unity lay in the plan. Might not the Farm and Home Purchase Act be sustained on similar grounds, the incidental benefit to a validly designated class being subordinated to the other public purpose involved, as in the Welfare Act?

By this decision, the Welfare Act becomes the only land act capable of full administration, since appropriated funds will not carry the Farm and Home Purchase Act very far. Hence, in this direction only the farmer-veteran may obtain State aid. But there remains one additional measure whose validity has been decided, in the second decision in *Veterans Welfare Board v. Riley*.[19] This is the Veterans Educational Act[20] which provides transportation, tuition fees, textbooks, and a monthly allowance to veterans desiring to continue their education under the general supervision of the Veterans Welfare Board. Such aids to education are sustained

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[14] See the concurring opinion of Rhodes, J. 27 Cal. 176, 228.

[15] For a clear discussion of this point with full citation of authorities, see Rowley v. Clarke, supra, n. 13.

[16] State *ex rel.* State Reclamation Board v. Clausen, (1920) 110 Wash. 525, 530, 188 Pac. 538; Hill v. Rae (1916) 52 Mont. 378, 158 Pac. 826; Wheelon v. South Dakota Land Settlement Board (1921) 181 N. W. (S. D.) 359; McMahon v. Olcott (1913) 65 Ore. 537, 133 Pac. 836.

[17] (1920) 253 U. S. 233.

[18] N. Dak. Laws 1919, c. 150.

[19] (June 17, 1922) 63 Cal. Dec. 709.

[20] Supra, n. 4.

as being for public purposes, and as within the general constitutional provisions as to education.[21] The benefits of this particular act are then held to be validly restricted to veterans. And this benefit, so conferred on them alone, is not regarded as violative of Article IV, section 32, of the California Constitution, forbidding extra compensation to servants, public officers and contractors.

On this point there is a dissenting opinion, which also regards the various allowances as amounting to gifts within the prohibitions of section 31 of the same Article. On both points however, the reasoning of the majority opinion seems preferable. The mere fact that educational aid is extended in cash allowance form does not make it into a gift,[22] public purposes being served through the benefit received by the State from the extension of education in a direction in which such benefit may reasonably be expected to arise.[23] Nor do "services" of the sort rendered by soldiers and sailors seem to be within the contemplated scope of section 32. This section is properly applicable to concrete acts performed consciously for the State as a political organism, rather than to the complex group of motives and objects of solicitude involved in the notion of "patriotic service."

In California, then, the veteran ready to farm, or to learn, may obtain State assistance toward either. Both forms of aid involve constructive social activity, and some predictable social benefit. Hence the stringent prohibitions which barred the flat cash bonus have served their purpose, in that, although they have not precluded some expression of State gratitude for patriotic service, inadequate though it may be, they have forced such expression into productive channels.

R. R. L.

DEDICATION BY ESTOPPEL: BONA FIDE PURCHASER OF DEDICATED LAND—*Phillips v. Laguna Beach Company, et al.*,[1] brings out the fact that some confusion of language and thought is to be found in the much-litigated questions concerning dedication of land in California. The defendant corporation had repeatedly and for many years, through its officers and agents, represented the lands in question as having been dedicated for public park purposes. The plaintiff had purchased neighboring land relying on such dedication. This was followed by the "placing of pavilions, drinking fountains, a tennis court and permitting the public to use the property at will".[2] Thereafter, the defendant corporation attempted to repudiate the arrangements as to dedication; and,

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[21] California Constitution, Art. IX, § 1.

[22] See also MacMillan v. Clarke (1920) 184 Cal. 491, 194 Pac. 1030, and comment thereon in 9 California Law Review, 431.

[23] Carman v. Hickman County (1919) 215 S. W. (Ky.) 408.

[1] (January 21, 1922) 37 Cal. App. Dec. 296. Rehearing granted in the Supreme Court, March 20, 1922.

[2] Supra, n. 1, p. 298.